101ST CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPT. 101-953
Part 1

THE FARM ANIMAL AND RESEARCH FACILITIES PROTECTION ACT OF 1990

OCTOBER 26.—Ordered to be printed

Mr. DE LA GARZA, from the Committee on Agriculture, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 3270]

The Committee on Agriculture, to whom was referred the bill (H.R. 3270), a bill entitled the "Farm Animal and Research Facilities Protection Act of 1990," having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert the following:

SECTION 1. AMENDMENTS TO THE FOOD SECURITY ACT OF 1985.

Title XIV of the Food Security Act of 1985 is amended by adding the following new subtitle:

"Subtitle D—Protection of Farm Animal and Research Facilities

"SEC. 1481. SHORT TITLE.

"This subtitle may be cited as the 'Farm Animal and Research Facilities Protection Act of 1990'.

"SEC. 1482. FINDINGS.

"Congress finds that—

"(1) there have been an increasing number of illegal acts committed against farm animal, research, and educational facilities;

"(2) these illegal acts threaten the production of agricultural products and damage the public interest by jeopardizing scientific, biomedical, or agricultural research;

"(3) these illegal acts interfere with the property rights of the owners of the facilities;

"(4) Federal protection of farm animal, research, and educational facilities is necessary to prevent and eliminate burdens on commerce;

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"(5) regulation is necessary to protect the welfare of animals and productive use of Federal research funds and to prevent unauthorized possession, alteration, destruction, or transportation of research records, test data, research materials, equipment, research animals, or any combination thereof.

"SEC. 1483. DEFINITIONS.

"As used in this subtitle—

"(1) The term 'animal' means warm or cold-blooded animals used for food, fiber production, agriculture, research, education, testing, or exhibition, and includes poultry, fish, and invertebrates.

"(2) The term 'animal facility' includes any vehicle, building, structure, research facility, or premises where an animal is kept, handled, housed, exhibited, bred, or offered for sale.

"(3) The term 'person' means any individual, corporation, association, joint stock company, firm, trust, partnership, two or more persons having a joint or common interest, or other legal entity.

"(4) The term 'Secretary' means the Secretary of Agriculure.

"(5) The term 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the American Virgin Islands, Guam, American Samoa, or any other territory or possession of the United States.

"SEC. 1484. PROHIBITED ACTS.

"(a) IN GENERAL.—Whoever travels in interstate or foreign commerce or uses or causes to be used any facility of interstate or foreign commerce, including the mail, telegraph, telephone, radio, or television, for the purpose of committing the acts specified in subsection (b) and commits or attempts to commit such acts shall be punished in accordance with section 1485.

"(b) SPECIFIED ACTS.—The acts specified in this subsection are the following:

"(1) to steal or cause the unauthorized release or intentional loss of any animal from an animal facility;

"(2) to vandalize, steal, or intentionally damage any property in or on an animal facility;

"(3) to break and enter any animal facility with the intent to destroy, alter, duplicate, or obtain the unauthorized possession of records, data, materials, equipment, or animals;

"(4) to receive, conceal, or retain any material, equipment, or animals of any animal facility, with knowledge that they have been stolen or converted; or

"(5) to enter, obtain unauthorized access to, obtain access under false pretenses to, or remain on, an animal facility with intent to commit an act specified in paragraphs (1) through (4).

"SEC. 1485. PENALTIES.

"(a) IN GENERAL.—Any person who is judged guilty of an offense under section 1485 shall be imprisoned for not more than one year, fined in accordance with title 18, section 3571 of the United States Code, or both, for each such offense.

"(b) WILLFUL OFFENSE.—Any person who is judged guilty of a willful offense under section 1484 that causes harm to person or property shall be imprisoned for not more than 10 years, fined in accordance with title 18, section 3571 of the United States Code, or both, for each such violation.

"(c) LIFE ENDANGERING OFFENSES.—Any person who is judged guilty of an offense under section 1484, whereby the life of any person is placed in jeopardy, shall be imprisoned for not more than 20 years, fined in accordance with title 18, section 3571 of the United States Code, or both, for each such violation.

"SEC. 1486. REPORTING OF VIOLATIONS BY THE SECRETARY.

"For purposes of enforcing the provisions of this subtitle, the Secretary—

"(1) may report any offense under this subtitle to any appropriate law enforcement agency of the United States;

"(2) may forward a reported offense under this subtitle to any law enforcement agency of the United States; and

"(3) shall provide to the extent practicable, any assistance requested by a law enforcement agency of the United States or any State or local government in connection with an investigation of an offense under this subtitle.

"SEC. 1487. STUDY OF EFFECT OF TERRORISM ON CERTAIN ANIMAL FACILITIES.

"(a) STUDY.—The Secretary and the Attorney General of the United States shall jointly conduct a study on the extent and effects of domestic and international ter-

rorism on animal research, production, and processing facilities and all other facilities in which animals are used for research, food production, or exhibition.

"(b) SUBMISSION OF STUDY.—Not later than 1 year after the date of enactment of this subtitle, the Secretary and Attorney General shall submit a report that describes the results of the study conducted under subsection (a) together with any appropriate recommendations and legislation to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

"SEC. 1488. COURT JURISDICTION.

"The district courts of the United States, the District Court of Guam, the District Court of the Virgin Islands, and the United States courts of other territories and insular possessions shall have jurisdiction—

"(1) specifically to enforce, and to prevent and restrain a person from violating, this subtitle; and

"(2) over any other kinds of cases arising under this subtitle.

"SEC. 1489. PRIVATE RIGHTS OF ACTION.

"(a) IN GENERAL.—Any person who has been directly damaged by reason of a violation of this subtitle may recover reasonable actual damages, and consequential damages resulting from loss of research or food production, together with court costs, including reasonable attorney's fees, from the person causing such damage.

"(b) AMOUNT IN CONTROVERSY.—To be entitled to bring suit under this section, the amount in controversy must exceed $10,000.

"(c) CONSTRUCTION.—Nothing in this subtitle shall be construed to affect any other rights of a person who has been damaged by reason of a violation of this subtitle. Subsection (a) shall not be construed to limit the exercise of any such rights arising out of or relating to a violation of section 1484.

"SEC. 1490. EFFECT OF STATE LAWS.

"Nothing in this subtitle shall be construed or interpreted to affect or preempt any Federal or State law or regulation.".

SEC. 2. AMENDMENTS TO THE TABLE OF CONTENTS.

The table of contents in section 2 of the Food Secruity Act of 1985 (7 U.S.C. 1281 note) is amended by adding after "SEC. 1471. EFFECTIVE DATE." the following:

"Subtitle D—Protection of Farm Animal and Research Facilities

"Sec. 1481. Short title.
"Sec. 1482. Findings
"Sec. 1483. Definitions.
"Sec. 1484. Prohibited acts.
"Sec. 1485. Penalties.
"Sec. 1486. Reporting of violations by the Secretary.
"Sec. 1487. Study of effect of terrorism on certain animal facilities.
"Sec. 1488. Court jurisdiction.
"Sec. 1489. Private right of action.
"Sec. 1490. Effect on State laws."

Amend the title so as to read:

An Act entitled "The Farm Animal and Research Facilities Act of 1990".

H.R. 3270—BRIEF EXPLANATION

The bill creates Federal protections for farm animal and research facilities by providing for penalties of up to 20 years imprisonment and fines for specified acts involving interstate commerce, including the theft of animals or property from animal facilities, damage to such facilities, and unauthorized entry into such facilities. Also provides for a joint study by the Secretary of Agriculture and the Attorney General on the extent and effects of domestic and international terrorism with respect to animal facilities.

PURPOSE AND NEED

H.R. 3270 is designed to foster and promote food production and animal research and education by protecting animals and animal facilities from illegal activities.

Food production and research are important segments of the economy. Food producers have overcome animal disease and adverse weather to produce high quality, low price animal food products. Researchers have persevered to eliminate disease and expand our life expectancy. The dedication of these groups is commendable. They typically work long hours with little financial reward to improve the quality of both human and animal life. Not only do these individuals have an economic motive to respect and care for animals, a love of animals is an essential component of their professions.

Now animal researchers and the producers of our Nation's food supply are under attack by those who sometimes use violence to advance their goals. In 1989 alone, there were 19 illegal acts committed against farms and research facilities nationwide. Such actions not only threaten existing food production and research, and impede future advances, they have created a growing atmosphere of fear among those to whom the Nation owes so much.

Federal protection of animal facilities is essential. Those who commit illegal acts operate on a national level and receive funding on a national level. The States alone cannot solve the problem, and therefore need the resources of the Federal government.

In granting this Federal protection, Congress is not unmindful that the issue of animals in food production and research is controversial. Accordingly, this Act has been carefully drafted to protect animal facilities while recognizing the individual's right to express his or her own views in a lawful manner. However, those who choose to act illegally will be subjected to penalties.

Section-by-Section Analysis

Section 1—Amendments to the Food Security Act of 1985

Section 1 of the bill amends Title XIV of the Food Security Act of 1985 by adding a new subtitle entitled "Protection of Farm Animal and Research Facilities" including the new sections 1481 through 1490.

Section 1481—Short title

New section 1481 provides that the subtitle may be cited as the "Farm Animal and Research Facilities Protection Act of 1990".

Section 1482—Findings

New section 1482 provides the findings of Congress, including the following:

(1) There have been an increasing number of illegal acts committed against farm animal, research, and educational facilities; .

(2) These illegal acts threaten the production of agricultural products and damage the public interest by jeopardizing scientific, biomedical, or agricultural research;

(3) These illegal acts interfere with the property rights of the owners of the facilities;

(4) Federal protection of farm animal, research, and educational facilities is necessary to prevent and eliminate burdens on commerce;

(5) Regulation is necessary to protect the welfare of animals and productive use of Federal research funds and to prevent unauthorized possession, alteration, destruction, or transportation of research records, test data, research materials, equipment, research animals, or any combination thereof.

Section 1483—Definitions

New section 1483 provides that the following terms are defined, for purposes of subtitle D, as indicated:

(1) The term "animal" means warm or cold-blooded animals used for food, fiber production, agriculture, research, education, testing, or exhibition, and includes poultry, fish, and invertebrates. It is the intent of the Committee that the term "exhibition" includes recreational activities involving horses.

(2) The term "animal facility" includes any vehicle, building, structure, research facility, or premises where an animal is kept, handled, housed, exhibited, bred, or offered for sale.

(3) The term "person" means any individual, corporation, association, joint stock company, firm, trust, partnership, two or more persons having a joint or common interest, or other legal entity.

(4) The term "Secretary" means the Secretary of Agriculture.

(5) The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the American Virgin Islands, Guam, American Samoa, or any other territory or possession of the United States.

Section 1484—Prohibited acts

New section 1484(a) provides that whoever travels in interstate or foreign commerce or uses or causes to be used any facility of interstate or foreign commerce, including the mail, telegraph, telephone, radio, or television, for the purpose of committing the acts specified in section 1484(b) and commits or attempts to commit such acts shall be punished in accordance with section 1485.

Section 1484(b) enumerates the following prohibited acts:

(1) To steal or cause the unauthorized release or intentional loss of any animal from an animal facility;

(2) To damage, vandalize, or steal any property in or on an animal facility;

(3) To break and enter any animal facility with the intent to destroy, alter, duplicate, or obtain the unauthorized possession of records, data, materials, equipment, or animals;

(4) To receive, conceal, or retain any material, equipment, or animals of any animal facility, with knowledge that they have been stolen or converted; and

(5) To enter, obtain unauthorized access under false pretenses to, or remain on, an animal facility with intent to commit an act prohibited under this section.

Section 1485—Penalties

New section 1485(a) provides that any person who is judged guilty of an offense under section 1848 will be punished by imprisonment for not more than one year, a fine in accordance with 18 U.S.C. § 3571, or both, for each such offense.

New section 1485(b) provides that any person who is judged guilty of a willful offense under section 1484 that causes harm to person or property will be punished by imprisonment for not more than 10 years, a fine in accordance with 18 U.S.C. § 3571, or both, for each such violation.

New section 1485(c) provides that any person who is judged guilty of offense under section 1484, whereby the life of any person is placed in jeopardy, will be punished by imprisonment for not more than 20 years, a fine in accordance with 18 U.S.C. § 3571, or both, for each such violation.

Section 1486—Reporting of violations by the Secretary

For purposes of enforcing the provisions of subtitle D, the Secretary may report any offense under subtitle D to any appropriate law enforcement agency of the United States, may forward a reported offense under subtitle D to any law enforcement agency of the United States, and must provide, to the extent practicable, any assistance requested by a law enforcement agency of the United States or any State or local government in connection with an investigation of an offense under subtitle D.

Section 1487—Study of effect of terrorism on certain animal facilities

New section 1487(a) requires the Secretary and the Attorney General of the United States to jointly conduct a study on the extent and effects of domestic and international terrorism on animal research, production, and processing facilities and all other facilities in which animals are used for research, food production, or exhibition.

New section 1487(b) requires that not later than 1 year after the date of enactment of this subtitle, the Secretary and Attorney General submit a report that describes the results of the study conducted under section 1487(a) together with any appropriate recommendations and legislation, to the Committees on Agriculture.

Section 1488—Court jurisdiction

New section 1488 provides for jurisdiction, in the district courts of the United States, the District Court of Guam, the District Court of the Virgin Islands, the Highest Court of American Samoa, and the United States courts of other territories—

(1) specifically to enforce, and to prevent and restrain a person from violating, this subtitle; and

(2) over any other kinds of cases arising under that subtitle.

Section 1489—Private right of action

New section 1489(a) provides that any person who has been directly damaged by reason of a violation of this subtitle may recover reasonable actual damages, and consequential damages resulting from loss of research or food production, together with court costs, including reasonable attorney's fees, from the person causing such damage.

New section 1489(b) provides for a $10,000 amount in controversy requirement for suits under subtitle D.

New section 1489(c) provides that nothing in subtitle D may be construed to affect any other rights of a person who has been damaged by reason of a violation of subtitle D and that section 1489(a) may not be construed to limit the exercise of any such rights arising out of or relating to a violation of section 1484.

Section 1490—Effect on State laws

New section 1490 provides that nothing in the subtitle may be construed or interpreted to affect or preempt any Federal or State law or regulation.

Section 2—Amendments to the table of contents

The table of contents in section 2 of the Food Security Act of 1985 is conformed to reflect the addition of subtitle D.

COMMITTEE CONSIDERATION

I. HEARINGS

The Subcommittees on Livestock, Dairy, and Poultry and on Department Operations, Research, and Foreign Agriculture held a joint public hearing on animal research facilities protection on February 28, 1990.

The Subcommittee on Department Operations, Research, and Foreign Agriculture held a further public hearing on H.R. 3270 on July 17, 1990.

II. SUBCOMMITTEE CONSIDERATION

The Subcommittee on Department Operations, Research, and Foreign Agriculture met, pursuant to notice, in open business session on July 17, 1990, to consider H.R. 3270. The session concluded without disposition of H.R. 3270.

III. FULL COMMITTEE CONSIDERATION

The Committee on Agriculture met, pursuant to notice, in open business session on October 22, 1990. The Subcommittees on Livestock, Dairy, and Poultry and on Department Operations, Research, and Foreign Agriculture were discharged from further consideration of H.R. 3270. Chairman de la Garza then recognized Mr. Stenholm, who explained the bill.

After discussion, the Chairman recognized Mr. Campbell, who inquired of Mr. Stenholm whether an amendment to the bill or report language could be offered to include in the definition of "animal facility" certain Federal lands that are leased for grazing purposes in order to protect people who have animals grazing Federal lands in the West under Federal grazing permits.

Mr. Stenholm then inquired whether the inclusion of "premises" in the definition of animal facility in the bill would mean that such lands would already be covered. It was noted that the term "premises" may be construed too narrowly to include such lands. Mr. Smith suggested that the definition in the substitute be expanded to include lands managed by the United States. After further discussion of this issue, Chairman de la Garza recognized Mr. Stenholm, who offered an amendment in the nature of a substitute. Mr.

Stenholm noted that the amendment contained several perfecting changes. A representative from the Department of Agriculture stated that the Department had no objections to the bill as amended by the substitute. After discussion of the substitute, the substitute amendment was adopted by voice vote.

The Committee then agreed, by a voice vote, in the presence of a quorum, to report the bill, as amended, to the House with the recommendation that it do pass.

Administration Position

At the time of the filing of this report, the Committee had not received a report from the U.S. Department of Agriculture concerning H.R. 3270, as amended, a bill entitled the "Farm Animal and Research Facilities Protection Act of 1989".

The views of the Administration on H.R. 3270 as introduced are set forth in the following letters:

Executive Office of the President,
Office of Science and Technology Policy,
Washington, DC, February 27, 1990.

Mr. James C. Murr,
Assistant Director for Legislative Reference, Office of Management and Budget, New Executive Office Building, Washington, DC.

Dear Mr. Murr: The Office of Science and Technology Policy, Executive Office of the President, objects to the positions that the Department of Justice (DOJ) proposes to take on S. 727, the Senate-passed "Animal Research Facilities Protection Act of 1989," H.R. 3270, the "Farm Animal and Research Facilities Protection Act of 1989," and H.R. 3349, the "Health Facilities Protection and Primate Center Rehabilitation Act of 1989." We believe the Administration should support enactment of these Bills, or some synthesis of them.

Basic research on animals is a fundamental component of activities supported by many Federal agencies. Animal research is critical to research which benefits the health of human beings and of animals alike, and in ensuring the safety, efficacy, and quality of pharmaceutical and biological agents used in the practice of human and veterinary medicine. The vitality of our pharmaceutical, biotechnology, and agricultural industries depends upon continued high-quality animal research conducted in conformity with regulations and guidelines covering that research. This research is of immense value to the welfare of the citizens of this country and the Federal government must ensure that the environment in which such research is conducted, and the persons pursuing such research, are free from threats of violence, intimidation, and debilitating distractions.

Public opinion polls have repeatedly shown that the American people support the humane use of animals in biomedical research. Nevertheless, a small component of the population opposes the use of animals in research or product testing, and appear to be willing to go to almost any lengths to interrupt research activities, intimidate and threaten researchers, conduct unlawful break-ins, commit vandalism, and destroy research property, and needlessly increase

the cost of doing research so as to drive more and more researchers out of laboratory work. While some interested parties are no doubt concerned primarily with assuring humane treatment of animals in research, the major organizations identified with "animal rights" have made it very clear that they hope to bring animal research to its knees, and eventually to abolish altogether the use of animals in research.

We have appended what is at best a partial list of break-ins, robberies, and destructive episodes involving research conducted by, or supported by, the National Institutes of Health (NIH), as a document attesting to the growing violence of these activities perpetrated by animal rights groups.

Their advocacy of alternative methods is a smokescreen. NIH and other agencies have for years vigorously pursued the development of alternative methods where they can be used, but they are adjuncts to, and not substitutes for, animal research. The complexities of integrated biological systems can only be studied in animals. Very few can be studied in the human being without prior studies in animal tissues and whole animals.

The passage of national legislation would constitute a powerful statement that this country will not tolerate illegal and violent acts by opponents of animal research. It would strengthen the resolve of scientists to go forward with their essential work. It would encourage young people to enter research careers, who may now be deterred by the daunting prospect of endless psychological warfare with animal activists, and the ever-present prospect of the destruction of their life's work by a night of violence.

The Federal law would also greatly strengthen the hand of the Federal Bureau of Investigation in entering cases that now are chiefly dealt with at the local level, with varying degrees of effectiveness. The animal rights movement is a national movement, with considerable circumstantial evidence of conspiratorial behavior. The so-called "Animal Liberation Front" claims to have national membership. Furthermore, within hours of break-ins, thefts, and destruction of laboratories or equipment, an organization known as the "People for the Ethical Treatment of Animals" has videotapes, and issues a press release. The bills under consideration here would strengthen law enforcement in dealing with this growing, well-organized, well-financed, unscrupulous, movement.

For all these reasons, the OSTP urges that the Administration support enactment of S. 727, H.R. 3270, and H.R. 3349.

OSTP supports DOJ in its opposition to H.R. 3223, the "Animal Welfare Improvement Acts of 1989", which would condone illegal actions by citizens who may contend that such acts are for the purpose of documenting violations of Federal regulation. We should all oppose this "the end justifies illegal means" bill.

Sincerely,

D. ALLAN BROMLEY,
Director.

JAMES B. WYNGAARDEN,
Associate Director for Life Sciences.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, DC, June 14, 1990.

Hon. E (KIKA) DE LA GARZA,
Chairman, Committee on Agriculture,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Agriculture (USDA) on H.R. 3270, the "Farm Animal and Research Facilities Protection Act of 1989."

Although the Department supports the Congress' efforts to protect farm animal and research facilities, we do not support enactment of H.R. 3270.

H.R. 3270 seeks to prevent, deter, and penalize illegal acts committed against animal facilities, including any "vehicle, building, structure, or premises, where an animal is kept, handled, housed, exhibited, bred, or offered for sale." Animal is defined to mean, "any warm or cold-blooded animal used in food or fiber production, agriculture, research, testing, or education including poultry, fish, and insects."

The bill amends Title XIV of the Food Security Act of 1985 (P.L. 99-198) by prohibiting a person from: (1) acquiring or exercising control over an animal, animal facility, or property from an animal facility without the consent of the owner; (2) damaging or destroying an animal, animal facility, or property from an animal facility without the consent of the owner; and (3) entering or remaining concealed in an animal facility to commit a prohibited act or with the intent to commit a prohibited act without the consent of the owner. The bill authorizes penalties of up to $10,000 and imprisonment of up to 3 years for committing a prohibited act. In addition to the penalties, the bill also ensures a private right of action for any person damaged through a violation. Finally, H.R. 3270 authorizes the Secretary of Agriculture to investigate any offense; seek the assistance of any local, State, or Federal law enforcement agency in conducting an investigation; and coordinate any investigation with local, State or Federal law enforcement agencies.

The Department's Animal and Plant Health Inspection Service (APHIS) administers the Animal Welfare Act, and conducts an active and comprehensive enforcement program under the act to ensure the humane treatment of animals regulated under the Act. We are keenly aware of the increasing number of acts of theft and destruction that are being committed against research facilities and farm animal facilities, and we join with the sponsors of this legislation in condemning these acts. Such illegal acts have destroyed years of valuable biomedical research and disrupted food production—activities that benefit all of society.

Though we support the spirit of the legislation, we do not believe it would be appropriate or practical for USDA to investigate violations of this legislation. APHIS inspectors are not trained as law enforcement officials, and we do not believe they should be placed in such a position. We also question the advisability of placing regulatory officials in the position of protecting the entities they regulate.

In addition, as a more general matter, legislation of this kind is not necessary for the reasons cited by the Department of Justice in its letter to you of May 25, 1990.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

CLAYTON YEUTTER,
Secretary.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, September 19, 1990.

Hon. GEORGE E. BROWN, Jr.,
Chairman, Subcommittee on Department Operations, Research, and Foreign Agriculture, Committee on Agriculture, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This letter is in response to your request for the views of the Department of Justice on the amendment in the nature of a substitute to H.R. 3270, the "Farm Animal and Research Facilities Protection Act of 1990." The Department of Justice recommends against enactment of this legislation.

The proposed amendment, like the original H.R. 3270, would create a broad new class of federal offenses to protect research facilities and farms. Although we remain sympathetic to the goals of this legislation, we continue to believe that these goals would not be well served by the proposed legislation, either in its original form or as amended.

The position of the Department of Justice on new federal legislation to curb animal research facility break-ins was stated at some length in our May 25, 1990, letter to you. To briefly restate our position: there is an adequate statutory basis for federal prosecution of serious criminal violations at research or agricultural facilities. During the pendency of H.R. 3270 and other similar legislation, there has not been a single instance identified in which the Federal Bureau of Investigation declined to enter a case because there was no statutory basis for it to do so.

We believe that less serious criminal incidents are properly handled at the state and local level, with federal technical assistance available to aid state investigative agencies upon request. If this approach occasionally yields unsatisfactory results, then the possibility of better state-to-state cooperation or state statutes needs to be explored. We note that in the July 17, 1990, hearings on H.R. 3270, one witness testified that there were eleven new state statues addressing animal rights terrorism. Our own survey of state laws, which was begun at the request of Congressman Gunderson, is incomplete, but we also have discovered a number of new state laws in this area. In light of the lack of strong evidence of a particular need for new federal legislation in this area, we believe that it is important to allow the states to continue to take the initiative.

Turning specifically to the proposed amendment to H.R. 3270, it appears to be very similar to the original except that (1) it specifi-

cally adds educational and recreational facilities to the list of protected places, where these facilities are included only by implication in the earlier version; (2) it broadens the definition of "animal" to include all invertebrates, where the earlier version includes only insects, a class of invertebrates; and (3) it removes investigative authority from the Department of Agriculture without stating clearly where it would be placed. As with the original H.R. 3270, a great deal of extremely trivial conduct is arguably included within these federal criminal prohibitions.

The first two changes are not significant from the point of view of the Department of Justice; however, the ambiguity which would result from authorizing the Department of Agriculture's investigators only to report violations and to assist in investigating them is not desirable. If the intent is to charge the Federal Bureau of Investigation with the duty to investigate violations of the Act, we believe that it would be better to say this outright.

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the presentation of this report.

Sincerely,

BRUCE C. NAVARRO,
Deputy Assistant Attorney General.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AND INTERGOVERNMENTAL AFFAIRS,
Washington, DC, May 25, 1990.

Hon. GEORGE E. BROWN, Jr.,
Chairman, Subcommittee on Department Operations, Research, and Foreign Agriculture, Committee on Agriculture, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your March 5, 1990 letter to Deputy Assistant Attorney General Paul L. Maloney. In your letter you thanked Mr. Maloney for his testimony on February 28, 1990, on the issues raised by animal research facility break-ins, and posed a number of follow-up questions.

At the outset we wish to emphasize the Department's condemnation of the criminal activity at issue. The kinds of offenses that are being perpetrated by these individuals are not only destructive to the research effort, but they are dangerous to human life and extremely destructive to property. The Department's reluctance to agree to new, special criminal sanctions to curb this activity is in no way to be construed as a belief that this criminal activity is not serious or deserving of a harsh response. The Department completely supports strict enforcement of the law against these individuals, and would support changes in existing law to remedy problems in valuing damage to destroyed or delayed research in federal criminal law. Some preliminary efforts have been made in this direction among the concerned agencies, and the Department believes that this is a promising approach.

You ask for the Department's response to a statement to the effect that a new federal law would strengthen the hand of the Federal Bureau of Investigation in entering cases that now are

chiefly dealt with at the local level. The Department continues to believe that new federal law is not necessary, as we testified on February 28, 1990. The Federal Bureau of Investigation has never, to our knowledge, had to refrain from entering a laboratory facility case because there was no statutory basis for its involvement. It may decline to investigate a case because it believes that the case will not meet the prosecutive guidelines of the local United States Attorney, but this has nothing to do with the adequacy of the applicable federal law. We note that no panelist identified a single instance in which the Federal Bureau of Investigation declined to enter a case because there was no statutory basis for it to do so. We believe that adequate federal criminal jurisdiction already exists to investigate violations appropriate for a federal response.

You ask the Department to identify the criteria which must be met before the Federal Bureau of Investigation investigates a case. As you know, when the Bureau has evidence of a federal violation within its investigative jurisdiction, it approaches the local United States Attorney and discusses the case with the prosecutor. The prosecutor then decides whether further investigation should be authorized. Prosecutive policies vary from district to district, but they always account for factors such as the likelihood of identifying the perpetrator, the strength of the evidence that an offense was committed and that an identifiable defendant did it, the amount of damage that was done, and whether the case has sufficient jury appeal to make a conviction likely. Such prosecutive decisions are also influenced by the belief that criminal acts do not necessarily need to be prosecuted in federal court to be effectively prosecuted, and that in many cases, the offender can be punished more severely under applicable state law than under federal law. State prosecutive authorities have had considerable experience and success in prosecuting the serious common law felonies, and the Department believes that they would be similarly successful in appropriate cases of this type. We are somewhat puzzled by the statement of the Assistant Chief of Police at the University of Arizona that "federal help was extremely limited" at the University of California at Davis arson. This case is currently being investigated by the Bureau; we do not understand why it is said that federal help was extremely limited.

You ask whether there have ever been situations where a United States Attorney's proscutorial decision not to involve the Federal Bureau of Investigation has been overridden, and you ask the Department to identify specific instances. We must respectfully decline to answer this question with the specificity you are requesting. There have been a very few instances in which the Department has asked a United States Attorney to reconsider a decision to decline a case, but these have been such singular events that we do not believe that the handling of those cases would provide any guidance in resolving the problems at hand.

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ments warrant a second review by the United States Attorney, that of course can be done.

You ask for the Department's response to the view of the panelists that there is a need to "increase the ability to apprehend suspects by increasing the tools of apprehension." Four recommendations were made in this area. To be sure, more resources generally buy a higher level of law enforcement success. But whether being pursued federally or locally, burglary-type offenses have always had a comparatively low rate of solution. (The difficulties in apprehending perpetrators are alluded to by some of the panelists.) For this reason, we believe that the increase in resources that would be needed to solve more of these offenses is likely to be unacceptably high. With respect to the four recommendations, our views are as follows:

First, a centralized data bank accessible to both public and private security forces is suggested. The Department does not see what this would accomplish. The Public Health Service has collected some statistics, albeit unofficially, and the Bureau has begun to collect some statistics. There are substantial difficulties with having a data bank that is shared by law enforcement and private police forces. Much of the data collected by official law enforcement sources must be kept confidential to be useful; other data must be kept confidential by law.

Second, the use of this data to develop patterns modeled after the FBI's bomb tracking system is suggested. Again, we do not believe this is necessary. Further, we do not see where the line might be drawn between trivial and more serious break-ins. While some bomb-related activities are more dangerous than others, bombs are inherently dangerous and bombs and bomb threats are always serious; by contrast, research facility break-ins, though certainly are cause for concern, are simply not in the same category of dangerousness and we should not reflexively receive the same sort of treatment. Also, we note that one panelist proposed that a computerized data bank be created to "monitor the activities of groups involved in these break-ins." The Bureau's criminal investigative and counterterrorism mission is two-fold: first, to detect and prevent violations of law, and second, to apprehend for prosecution those who do violate the law. The Bureau does not monitor the activities of groups for the purpose of policing conduct, and it could not do so without violating constitutionally protected rights.

Third, a commitment by the FBI to monitor all animal facility break-in activity and to provide expertise which is lacking on the local level is suggested. Again, we do not think that the panelists have demonstrated a real need for this sort of monitoring by the FBI nor is it appropriate for the FBI to monitor every local violation. Moreover, the FBI already provides the assistance of its forensic laboratories to local law enforcement agencies which request it. In addition, the FBI will be including information concerning this kind of "special interest" terrorism in its forthcoming "Terrorism in the United States." This publication is distributed to about 12,000 State and local law enforcement agencies and will be a vivid demonstration of the importance we attach to animal research facility-related crime.

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Finally, you ask what criteria would have to be present in legislation to force involvement of both the Department of Justice and the Federal Bureau of Investigation in crimes of a less egregious nature. We believe that such legislation is unnecessary because the Department and the Federal Bureau of Investigation share the view of Congress that appropriate offenses against research facilities can and should be prosecuted federally. Such legislation would also be inappropriate because the decision to investigate and prosecute offenses is constitutionally committed under our system to the executive branch. *United States* v. *Nixon*, 418 U.S. 683, 693 (1974).

At the oversight hearings, Congressmen Gunderson and Volkmer posed questions about state law and data collection which the Department agreed to research. The research into these points is now being conducted and we hope to be able to respond to these questions soon. As we mentioned above, the Department is giving consideration to the particular problems posed in valuing research animals or half-completed research, with an eye toward making it easier to fairly appraise the loss of such material for purposes of federal criminal law.

In conclusion, Mr. Chairman, we want to thank you for raising these important issues in your subcommittee. Your hearings have been instrumental in increasing the public's awareness of the offenses that are being committed by dangerously misguided persons and organizations against those conducting research that is essential to the health and welfare of the Nation. We at the Department of Justice stand ready to assist in this critical effort.

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the presentation of this report.

Sincerely,

BRUCE C. NAVARRO,
Acting Assistant Attorney General.

BUDGET ACT COMPLIANCE (SECTION 308 AND SECTION 403)

The provisions of clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 (relating to estimates of new budget authority, new spending authority, or new credit authority, or increased or decreased revenues or tax expenditures) are not considered applicable. The estimate and comparison required to be prepared by the Director of the Congressional Budget Office under clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974 were not received by the Committee prior to the filing of this report.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that enactment of H.R.

3270, as amended, will have no inflationary impact on the national economy.

OVERSIGHT STATEMENT

No summary of oversight findings and recommendations made by the Committee on Government Operations under clause 2(b)(2) of rule X of the Rules of the House of Representatives was available to the Committee with reference to the subject matter specifically addressed by H.R. 3270, as amended.

No specific oversight activities other than the hearings detailed in this report were conducted by the Committee within the definition of clause 2(b)(1) of rule X of the Rules of the House of Representatives.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

FOOD SECURITY ACT OF 1985

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Sec. 1482. Findings.
Sec. 1483. Definitions.
Sec. 1484. Prohibited acts.
Sec. 1485. Penalties.
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Sec. 1487. Study of effect of terrorism on certain animal facilities.
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Sec. 1489. Private right of action.
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TITLE XIV—AGRICULTURAL RESEARCH, EXTENSION, AND TEACHING

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Subtitle D—Protection of Farm Animal and Research Facilities

SEC. 1481. SHORT TITLE.

This subtitle may be cited as the "Farm Animal and Research Facilities Protection Act of 1990".

SEC. 1482. FINDINGS.

Congress finds that—

(1) there have been an increasing number of illegal acts committed against farm animal, research, and educational facilities;

(2) these illegal acts threaten the production of agricultural products and damage the public interest by jeopardizing scientific, biomedical, or agricultural research;

(3) these illegal acts interfere with the property rights of the owners of the facilities;

(4) Federal protection of farm animal, research, and educational facilities is necessary to prevent and eliminate burdens on commerce;

(5) regulation is necessary to protect the welfare of animals and productive use of Federal research funds and to prevent unauthorized possession, alteration, destruction, or transportation of research records, test data, research materials, equipment, research animals, or any combination thereof.

SEC. 1483. DEFINITIONS.

As used in this subtitle—

(1) The term "animal" means warm or cold-blooded animals used for food, fiber production, agriculture, research, education, testing, or exhibition, and includes poultry, fish, and invertebrates.

(2) The term "animal facility" includes any vehicle, buidling, structure, research facility, or premises where an ainmal is kept, handled, housed, exhibited, bred, or offered for sale.

(3) The term "person" means any individual, corporation, association, joint stock company, firm, trust, partnership, two or more persons having a joint or common interest, or other legal entity.

(4) The term "Secretary" means the Secretary of Agriculture.

(5) The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the American Virgin Islands, Guam, American Samoa, or any other territory or possession of the United States.

SEC. 1484. PROHIBITED ACTS.

(a) IN GENERAL.—Whoever travels in interstate or foreign commerce or uses or causes to be used any facility of interstate or foreign commerce, including the mail, telegraph, telephone, radio, or television, for the purpose of committing the acts specified in subsection (b) and commits or attempts to commit such acts shall be punished in accordance with section 1485.

(b) SPECIFIED ACTS—The acts specified in this subsection are the following:

(1) to steal or cause the unauthorized release or intentional loss of any animal from an animal facility;

(2) to vandalize, steal, or intentionally damage any property in or on an animal facility;

(3) to break and enter any animal facility with the intent to destroy, alter, duplicate, or obtain the unauthorized possession of records, data, materials, equipment, or animals;

(4) to receive, conceal, or retain any material, equipment, or animals of any animal facility with knowldge that they have been stolen or converted; or

(5) to enter, obtain unauthorized access to, obtain access under false pretenses to, or remain on, an animal facility with intent to commit an act specified in paragraphs (1) through (4).

SEC. 1485. PENALTIES.

(a) IN GENERAL.—Any person who is judged guilty of an offense under section 1484 shall be imprisoned for not more than one year, fined in accordance with title 18, section 3571 of the United States Code, or both, for each such offense.

(b) WILLFUL OFFENSE.—Any person who is judged guilty of a willful offense under section 1484 that causes harm to person or property shall be imprisoned for not more than 10 years, fined in accordance with title 18, section 3571 of the United States Code, or both, for each such violation.

(c) LIFE ENDANGERING OFFENSES.—Any person who is judged guilty of an offense under section 1484, whereby the life of any person is placed in jeopardy, shall be imprisoned for not more than 20 years, fined in accordance with the title 18, section 3571 of the United States Code, or both, for each such violation.

SEC. 1486. REPORTING OF VIOLATIONS BY THE SECRETARY.

For purposes of enforcing the provisions of this subtitle, the Secretary—

(1) may report any offense under this subtitle to any appropriate law enforcement agency of the United States;

(2) may forward a reported offense under this subtitle to any law enforcement agency of the United States; and

(3) shall provide, to the extent practicable, any assistance requested by a law enforcement agency of the United States or any State or local government in connection with an investigation of an offense under this subtitle.

SEC. 1487. STUDY OF EFFECT OF TERRORISM ON CERTAIN ANIMAL FACILITIES.

(a) STUDY.—The Secretary and the Attorney General of the United States shall jointly conduct a study on the extent and effects of domestic and international terrorism on animal research, production, and processing facilities and all other facilities in which animals are used for research, food production, or exhibition.

(b) SUBMISSION OF STUDY.—Not later than 1 year after the date of enactment of this subtitle, the Secretary and Attorney General shall submit a report that describes the results of the study conducted under subsection (a) together with any appropriate recommendations and legislation to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

SEC. 1488. COURT JURISDICTION.

The district courts of the United States, the District Court of Guam, the District Court of the Virgin Islands, and the United States courts of other territories and insular possessions shall have jurisdiction—

(1) specifically to enforce, and to prevent and restrain a person from violating, this subtitle; and

(2) over any other kinds of cases arising under this subtitle.

SEC. 1489. PRIVATE RIGHT OF ACTION.

(a) IN GENERAL.—Any person who has been directly damaged by reason of a violation of this subtitle may recover reasonable actual damages, and consequential damages resulting from loss of research or food production, together with court costs including reasonable attorney's fees, from the person causing such damage.

(b) AMOUNT IN CONTROVERSY.—To be entitled to bring suit under this section, the amount in controversy must exceed $10,000.

(c) CONSTRUCTION.—Nothing in this subtitle should be construed to affect any other rights of a person who has been damaged by reason of a violation of this subtitle. Subsection (a) shall not be construed to limit the exercise of any such rights arising out of or relating to a violation of section 1484.

SEC. 1490. EFFECT ON STATE LAWS.

Nothing in this subtitle shall be construed or interpreted to affect or preempt any Federal or State law or regulation.

ADDITIONAL VIEWS OF HON. DAN GLICKMAN

The evidence of increasing numbers of terroristic crimes directed towards animal research and agricultural facilities is alarming. The hearing record on this legislation clearly demonstrates this fact and the fact that in an increasing number of these cases, the level of violence, directed both at individuals and property, is escalating.

The hearing record on this bill also demonstrates that as these crimes have proliferated, law enforcement officials at all levels, including federal officials, have responded. In many states, for example, legislatures have enacted laws similar to H.R. 3270 to enable their officials to respond more vigorously to these crimes.

However, neither the hearing record nor other evidence make a compelling case for a new federal statute.

First, existing state and local laws embrace the activities specified in H.R. 3270. For example, vandalism, breaking and entering, destruction of property, and endangerment of life are prohibited under numerous laws. The activities specified in this bill fall into one or more of these categories and could be, and are, investigated and prosecuted under existing statutes. Additionally, crossing of state lines or othrewise using the instrumentalities of interstate commerce to commit such crimes are activities which fall under federal statutes. In sum, the activities specified in this legislation are activities made illegal by existing local, state, and federal laws.

Second, enactment of this legislation will not, and should not, guarantee greater federal involvement in the investigation and prosecution of these cases. Federal investigatory and prosecutorial resources are strained to the breaking point at the same time these officials are being asked to pursue an alarming number of cases. In many instances, such cases are best prosecuted at the local level. In other instances, federal investigators provide extensive support and assistance to local and state officials in pursuing such cases. Such involvement presently and in the future depends on the seriousness of the incident and the availability of resources at the federal level, and should not be determined by the enactment of new statutes.

The primary author of this legislation has made several refinements to the bill as amended, as reflected in the version ordered reported by the Committee. These changes, especially the provision of a specific federal nexus for the acts prohibited under the legislation and the greater specificity with respect to the rights of individuals to take private acts to sue for restitution for damages, are significant and help address my concerns about the legislation.

Notwithstanding these improvements and my general support for the intent of the legislation, my concerns about the advisability and need for new federal criminal sanctions for this activity, as reprehensible as it indeed is, remain. I should also point out that

these concerns are shared by the Justice Department and the Agriculture Department, whose letters of comment on the bill are attached to these views. In particular, I question the need to delineate specific crimes and broaden under federal law the ability to sue for the collection of damaged when the trend in federal criminal and civil law is, appropriately and correctly, in the opposite direction.

However, in view of the compromises made to refine the legislation I will not oppose reporting the bill and permitting the normal legislative process to continue.

DAN GLICKMAN.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, DC, June 14, 1990.

Hon. E (KIKA) DE LA GARZA,
Chairman, Committee on Agriculture,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Agriculture (USDA) on H.R. 3270, the "Farm Animal and Research Facilities Protection Act of 1989."

Although the Department support the Congress' efforts to protect farm animal and research facilities, we do not support enactment of H.R. 3270

H.R. 3270 seeks to prevent, deter, and penalize illegal acts committee against animal facilities, including any "vehicle, building, structure, or premises, where an animal is kept, handled, housed exhibited, bred, or offered for sale." Animal is defined to mean, "any warm or cold-blooded animal used in food or fiber production, agriculture, research, testing, or education including poultry, fish, and insects."

The bill amends Title XIV of the Food Security Act of 1985 (P.L. 99-198) by prohibiting a person from: (1) acquiring or exercising control over an animal, animal facility, or property from an animal facility without the consent of the owner; (2) damaging or destroying an animal, animal facility, or property from an animal facility without the consent of the owner; and (3) entering or remaining concealed in an animal facility to commit a prohibited act or with the intent to commit a prohibited act without the consent of the owner. The bill authorizes penalties of up to $10,000 and imprisonment of up to 3 years for committing a prohibited act. In addition to the penalties, the bill also ensures a private right of action for any person damaged through a violation. Finally, H.R. 3270 authorizes the Secretary of Agriculture to investigate any offense; seek the assistance of any local, State, or Federal law enforcement agency in conducting an investigation; and coordinate any investigation with local, State, or Federal law enforcement agencies.

The Department's Animal and Plant Health Inspection Service (APHIS) administers the Animal Welfare Act, and conducts an active and comprehensive enforcement program under the act to ensure the humane treatment of animals regulated under the Act. We are keenly aware of the increasing number of acts of theft and destruction that are being committed against research facilities

and farm animal facilities, and we join with the sponsors of this legislation in condemning these acts. Such illegal acts have destroyed years of valuable biomedical research and disrupted food products—activities that benefit all of society.

Though we support the spirit of the legislation, we do not believe it would be appropriate or practical for USDA to investigatge violations of this legislation. APHIS inspectors are not trained as law enforcement officials, and we do not believe they should be placed in such a position. We also question the advisability of placing regulatory officials in the positions of protecting the entities they regulate.

In addition, as a more general matter, legislation of this kind is not necessary for the reasons cited by the Department of Justice in its letter to you of May 25, 1990.

The Office of Management and Budget advise that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

CLAYTON YEUTTER,
Secretary.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, September 19, 1990.

Hon. GEORGE E. BROWN, Jr.,
Chairman, Subcommittee on Department Operations, Research, and Foreign Agriculture, Committee on Agriculture, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This letter is in response to your request for the views of the Department of Justice on the amendment in the nature of a substitute to H.R. 3270, the "Farm Animal and Research Facilities Protection Act of 1990." The Department of Justice recommends against enactment of this legislation.

The proposed amendment, like the original H.R. 3270, would create a broad new class of federal offenses to protect research facilities and farms. Although we remain sympathetic to the goals of this legislation, we continue to believe that these goals would not be well served by the proposed legislation, either in its original form or as amended.

The position of the Department of Justice on new federal legislation to curb animal research facility break-ins was stated at some length in our May 25, 1990, letter to you. To briefly restate or position: there is an adequate statutory basis for federal prosecution of serious criminal violations at research or agricultural facilities. During the pendency of H.R. 3270 and other similar legislation, there has not been a single instance identified in which the Federal Bureau of Investigation declined to enter a case because there was no statutory basis for it to do so.

We believe that less serious criminal incidents are properly handled at the state and local level, with federal technical assistance available to aid state investigative agencies upon request. If this approach occasionally yields unsatisfactory results, then the possi-

bility of better state-to-state cooperation or state statutes needs to be explored. We note that in the July 17, 1990, hearings on H.R. 3270, one witness testified that there were eleven new state statutes addressing animal rights terrorism. Our own survey of state laws, which was begun at the request of Congressman Gunderson, is incomplete, but we also have discovered a number of new state laws in this area. In light of the lack of strong evidence of a particular need for new *Federal* legislation in this area, we believe that it is important to allow the states to continue to take the initiative.

Turning specifically to the proposed amendment to H.R. 3270, it appears to be very similar to the original except that (1) it specifically adds educational and recreational facilities to the list of protected places, where these facilities are included only by implication in the earlier version; (2) it broadens the definition of "animal" to include all invertebrates, where the earlier version includes only insects, a class of invertebrates; and (3) it removes investigative authority from the Department of Agriculture without stating clearly where it would be placed. As with the original H.R. 3270, a great deal of extremely trivial conduct is arguably included within these federal criminal prohibitions.

The first two changes are not significant from the point of view of the Department of Justice; however, the ambiguity which would result from authorizing the Department of Agriculture's investigators only to report violations and to assist in investigating them is not desirable. If the intent is to charge the Federal Bureau of Investigation with the duty to investigate violations of the Act, we believe that it would be better to say this outright.

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the presentation of this report.

Sincerely,

BRUCE C. NAVARRO,
Deputy Assistant Attorney General.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AND INTERGOVERNMENTAL AFFAIRS,
Washington, DC, May 25, 1990.

Hon. GEORGE E. BROWN, Jr.,
Chairman, Subcommittee on Department Operations, Research, and Foreign Agriculture, Committee on Agriculture, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your March 5, 1990 letter to Deputy Assistant Attorney General Paul L. Maloney. In your letter you thanked Mr. Maloney for his testimony on February 28, 1990, on the issues raised by animal research facility break-ins, and posed a number of follow-up questions.

At the outset we wish to emphasize the Department's condemnation of the criminal activity at issue. The kinds of offenses that are being perpetrated by these individuals are not only destructive to the research effort, but they are dangerous to human life and extremely destructive to property. The Department's reluctance to

agree to new, special criminal sanctions to curb this activity is in no way to be construed as a belief that this criminal activity is not serious or deserving of a harsh response. The Department completely supports strict enforcement of the law against these individuals, and would support changes in existing law to remedy problems in valuing damage to destroyed or delayed research in federal criminal law. Some preliminary efforts have been made in this direction among the concerned agencies, and the Department believes that this is a promising approach.

You ask for the Department's response to a statement to the effect that a new federal law would strengthen the hand of the Federal Bureau of Investigation in entering cases that now are chiefly dealt with at the local level. The Department continues to believe that new federal law is not necessary, as we testified on February 28, 1990. The Federal Bureau of Investigation has never, to our knowledge, had to refrain from entering a laboratory facility case because there was no statutory basis for its involvement. It may decline to investigate a case because it believes that the case will not meet the prosecutive guidelines of the local United States Attorney, but this has nothing to do with the adequacy of the applicable federal law. We note that no panelist identified a single instance in which the Federal Bureau of Investigation declined to enter a case because there was no statutory basis for it to do so. We believe that adequate federal criminal jurisdiction already exists to investigate violations appropriate for a federal response.

You ask the Department to identify the criteria which must be met before the Federal Bureau of Investigation investigates a case. As you know, when the Bureau has evidence of a federal violation within its investigative jurisdiction, it approaches the local United States Attorney and discusses the case with the prosecutor. The prosecutor then decides whether further investigation should be authorized. Prosecutive policies vary from district to district, but they always account for factors such as the likelihood of identifying the perpetrator, the strength of the evidence that an offense was committed and that an identifiable defendant did it, the amount of damage that was done, and whether the case has sufficient jury appeal to make a conviction likely. Such prosecutive decisions are also influenced by the belief that criminal acts do not necessarily need to be prosecuted in federal court to be effectively prosecuted, and that in many cases, the offender can be punished more severely under applicable state law than under federal law. State prosecutive authorities have had considerable experience and success in prosecuting the serious common law felonies, and the Department believes that they would be similarly successful in appropriate cases of this type. We are somewhat puzzled by the statement of the Assistant Chief of Police at the University of Arizona that "federal help was extremely limited" at the University of California at Davis arson. This case is currently being investigated by the Bureau; we do not understand why it is said that federal help was extremely limited.

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cline to answer this question with the specificity you are requesting. There have been a very few instances in which the Department has asked a United States Attorney to reconsider a decision to decline a case, but these have been such singular events that we do not believe that the handling of those cases would provide any guidance in resolving the problems at hand.

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First, a centralized data bank accessible to both public and private security forces is suggested. The Department does not see what this would accomplish. The Public Health Service has collected some statistics, albeit unofficially, and the Bureau has begun to collect some statistics. There are substantial difficulties with having a data bank that is shared by law enforcement and private police forces. Much of the data collected by official law enforcement sources must be kept confidential to be useful; other data must be kept confidential by law.

Second, the use of this data to develop patterns modeled after the FBI's bomb tracking system is suggested. Again, we do not believe this is necessary. Further, we do not see where the line might be drawn between trivial and more serious break-ins. While some bomb-related activities are more dangerous than others, bombs are inherently dangerous and bombs and bomb threats are always serious; by contrast, research facility break-ins, though certainly a cause for concern, are simply not in the same category of dangerousness and should not reflexively receive the same sort of treatment. Also, we note that one panelist proposed that a computerized data bank be created to "monitor the activities of groups involved in these break-ins." The Bureau's criminal investigative and counterterrorism mission is two-fold: first, to detect and prevent violations of law, and second, to apprehend for prosecution those who do violate the law. The Bureau does not monitor the activities of groups for the purpose of policing conduct, and it could not do so without violating constitutionally protected rights.

Third, a commitment by the FBI to monitor all animal facility break-in activity and to provide expertise which is lacking on the

local level is suggested. Again, we do not think that the panelists have demonstrated a real need for this sort of monitoring by the FBI nor is it appropriate for the FBI to monitor every local violation. Moreover, the FBI already provides the assistance of its forensic laboratories to local law enforcement agencies which request it. In addition, the FBI will be including information concerning this kind of "special interest" terrorism in its forthcoming "Terrorism in the United States." This publication is distributed to about 12,000 State and local law enforcement agencies and will be a vivid demonstration of the importance we attach to animal research facility-related crime.

Fourth, broader state and local subpoena power is suggested. This is a matter for the state legislatures, not for federal legislation. States can enter into compacts to honor each others' subpoenas to a greater degree if they wish.

Finally, you ask what criteria would have to be present in legislation to force involvement of both the Department of Justice and the Federal Bureau of Investigation in crimes of a less egregious nature. We believe that such legislation is unnecessary because the Department and the Federal Bureau of Investigation share the view of Congress that appropriate offenses against research facilities can and should be prosecuted federally. Such legisation would also be inappropriate because the decision to investigate and prosecute offenses is constitutionally committed under our system to the executive branch. *United States* v. *Nixon*, 418 U.S. 683, 693 (1974).

At the oversight hearings, Congressmen Gunderson and Volkmer posed questions about state law and data collection which the Department agreed to research. The research into these points is now being conducted and we hope to be able to respond to these questions soon. As we mentioned above, the Department is giving consideration to the particular problems posed in valuing research animals or half-completed research, with an eye toward making it easier to fairly appraise the loss of such material for purposes of federal criminal law.

In conclusion, Mr. Chairman, we want to thank you for raising these important issues in your subcommittee. Your hearings have been instrumental in inceasing the public's awareness of the offenses that are being committed by dangerously misguided persons and organizations against those conducting resarch that is essential to the health and welfare of the Nation. We at the Department of Justice stand ready to assist in this critical effort.

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the presentation of this report.

Sincerely,

BRUCE C. NAVARRO,
Acting Assistant Attorney General.

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